



## Portland District LENDER'S UPDATE September 2001



### **CHANGE OF OWNERSHIP ISSUES TO CONSIDER**

Both 7(a) and 504 loans are available to accomplish a total change of ownership between two parties conducting an arms length transaction, although the 504 loans may only be used to purchase the assets.

Here are some issues to consider:

- A. Is it an arm's length transaction: is the price a reasonable representation of the fair market value, the price which an independent buyer would be willing to pay?
- B. Have you provided an appropriate analysis of value? There are six (6) acceptable valuation methods as follow:
  1. Gross revenue multiplier, a percentage based on gross sales.
  2. Adjusted book value; book value is adjusted to reflect the fair market value of assets.
  3. Discounted future earnings, the amount and timing of future earnings must be forecast, then discounted.
  4. Capitalization of historical earnings, based on the net tangible asset value and excess earnings.
  5. Cash flow valuation, based on available cash, reasonable term and market interest rate.
  6. Qualified independent opinion of value, generally a licensed appraiser.

All six methods will be discussed in our next lender conference November 28, 2001 at the Portland District office. Contact Joe Martinez at 503-326-5214 if you are interested in attending.



### **CAUTION DO NOT USE FULL CREDIT BID BEFORE PURCHASE**



In the last few years we have noticed lenders using a practice that can jeopardize the SBA guarantee: the full credit bid. It is SBA policy that a full credit bid before the SBA purchases the guarantee creates a paid in full loan under the SBA guarantee system, and ends the SBA guarantee.

Generally, a full credit bid at a foreclosure sale is not a good idea unless the property is clearly worth substantially more than the loan balance. The SBA has formulas to use in determining the proper protective bid for a foreclosure sale. See SOP 50 51 2 Chapter 7 paragraphs 8-13 pages 7-11 through 7-13. We recommend that you use the SBA formula or a similar type of formula that is standard for your lending institution in determining the right bid. We also strongly recommend that you get the SBA's approval of the bid.

If the SBA has already purchased the loan, then a bid of the full loan balance does not necessarily harm the guarantee. However, if any other collateral remains after the full credit bid, and the bid prevents recovery from that collateral or from an obligor or guarantor, then a repair will be in order. A guarantor can point to the bid at the foreclosure sale and say that the lender was satisfied in full from the real property and therefore has no right to collect from any other person or property.

If you have any questions about the liquidation procedures that you are using, please be sure to contact your liquidation loan officer: Brian Otten at 503-326-5224, John Shelton at 503-326-5327, or Roger Wills at 503-326-5201.

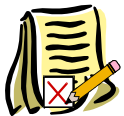


## **ACTIVE MILITARY DUTY: RIGHTS OF OBLIGORS AND GUARANTORS**



Please be advised that under the Soldiers' and Sailors' Relief Act of 1940, as amended, 50 Appendix USC § 526, as implemented under SBA policy, any individual obligor who is called up to active military duty has the right to certain benefits during that military duty. Under SOP 50 50 4 Chapter 5, Paragraph 8(e)(2) (page 5-13) any loan with an interest rate of above 6% must be reduced to 6% during military service, unless a court rules that that person's ability to pay the higher interest is not affected by the military service.

Also, no liquidation proceeding may be taken against such obligors during military service. The liquidation provisions also apply to any guarantors called into the military. However, if the primary obligation is to a legal entity such a corporation or to an obligor who is not called into the military, the interest rate is not impacted, and collection efforts are not suspended as to the primary obligor(s), any obligor or guarantor not called to duty, and any collateral not owned by the person called to military duty. If you have any questions, contact Portland District Counsel Sue Pickgrobe at 503-326-5226.



## **CAUTION: STATE SPECIFIC PROVISION BLOCK IN SBA NOTES AND GUARANTEES**

The revised SBA Note and Guarantee both include a box for state-specific provisions. At this time, there are no applicable provisions for Oregon or Washington. However, it is not a good practice to leave that area blank. Leaving blanks can lead to errors or unilateral modifications. We recommend that you put "None" or "Not Applicable" in that box to show that there are no applicable provisions.

## ***AUTOMATIC CANCELLATION OF LOANS WHEN THE GUARANTY FEE REMAINS UNPAID***



Effective August 1, 2001, all 7(a) guaranty loans with an original maturity in excess of 12 months that were approved on or after December 1, 2000, are subject to automatic cancellation if the guaranty fee is not paid within 90 days of approval.

If SBA does not receive the guaranty fee on a loan by the 90th day after loan approval, the Agency will issue to the lender a "Notice of Overdue Guaranty Fee." This notice will be generated on the 91st day after loan approval. The notice will provide the date the guaranty fee is required to be received or the guaranty for the loan will be cancelled. The required payment date will be 120 days from the approval date.

If the guaranty fee remains unpaid on the 121st day after approval, SBA will send a "Cancellation of Loan Guaranty" notice to the lender. Concurrent with the notice the SBA guaranty of the loan will be cancelled automatically.

SBA may reinstate the guaranty, subject to funding availability, if the lender submits the following to the district office:

1. A written request that the guaranty be reinstated;
2. The remittance of the full guaranty fee; and
3. Certification that there has been no adverse change to the financial or operational condition of the applicant concern since the loan was originally approved.

Avoid cancellation. Send the fee upon loan approval. If you have any questions, contact Joe Martinez at 503-326-5214.



*(Continued from page 5)*

is no addendum on file, you will need an agreement from the lender that it will not enforce any anniversary date termination provisions so long as SBA financing is outstanding.



## ***Environmental Reports – Part II***

The first part of this article covered the basic requirements for the environmental review: when an environmental report is needed, and what the SBA needs to see in order to approve an environmental report. We also explained the review process in the Portland District Office and how you will know that your report has been approved.

The second part of this series deals with 1) approving the environmental contractor and 2) cleanup when environmental concerns are found.

### **CONTRACTOR REQUIREMENTS**

#### ***Know your contractor***

The SBA has minimum requirements for environmental specialists who perform audits and give opinions about the environmental character of the property. The contractor must have adequate expertise and independence. The contractor must have no conflict of interest that would lend the SBA to question the contractor's impartiality. For instance, a contractor that has been working with the property seller for 5 years would not be impartial.

The best advice for choosing an environmental contractor is to use someone whose abilities have been tested. It is useful to get recommendations from other lenders and references from the contractor if you need to choose someone. It is always helpful to have experience with more than one contractor so that you have a fallback if the first one you call is not available.

Every report that relies on an environmental contractor's opinion must be accompanied by a contractor certification. The minimum requirements for the certification are found on pages 127-128 of SOP 50 10 4. For a model certification form, contact Esther Schulze at 503-326-5227.

## ***Read the Whole Report***

Become familiar with the contractor's style and consistency. Read the whole report and not just the summary. Does the report cover everything that you generally expect in an environmental audit? Does the contractor give an opinion or just quote other parties? You are relying on the contractor's expertise and opinion, and you want more than a list of the facts.

Do the conclusions match the contents? This office once reviewed a report that concluded that there were no environmental concerns after remediation had been completed. However, the narrative of the report stated that some monitoring wells had contaminants with levels above state water quality minimums. After contacting the Oregon Department of Environmental Quality about the site, I concluded that there were ongoing concerns that prevented SBA's approval of the environmental report during a significant period of additional monitoring. If you read the whole report, you avoid surprises.

### **CLEANUP**



On occasion an environmental cleanup will be necessary. Usually the SBA will want to see a No Further Action letter from the DEQ. SOP 50 10 4 describes various cleanup scenarios depending on what type of contamination is found. (Subpart A Chapter 5, Paragraph 7(g) pages 122-23) The SOP also references options for closing the loan without a complete cleanup. (paragraph 7(h)(1), pages 123-26). If the cleanup is small and quantifiable, it may be possible to escrow cleanup funds and disburse the loan prior to the cleanup. **Please note:** if you use the option of indemnification, you must use the SBA indemnification form.

Often the DEQ will require monitoring for a year after the cleanup to make sure that the groundwater is not contaminated. A full year cycle (four quarters of monitoring) allows a review through all of the seasons and water levels. If the DEQ requires a year of monitoring,

*(Continued on page 4)*

(Continued from page 3)

it is not likely that the SBA will approve the environmental report prior to the conclusion of the full year. However, once a year of reports show containment levels below state minimums, then the SBA might approve disbursement prior to the issuance of a No Further Action letter. Your contractor may be able to facilitate the SBA's discussion with DEQ in order to convince the SBA that remediation is complete and risk has been minimized.

If you have any question about this article, SBA requirements or any Environmental notice that you have received from the Portland District Office, you are welcome to call Sue Pickgrobe at 503-326-5226.



### **NO HIGHLIGHTING OR PUNCHING FINGERPRINT CARDS**

On May 14, 2001 the FBI started rejecting any fingerprint cards (FD-258) with highlighted areas. Those cards will be returned to the contributing agency. The FBI understands that contributors use highlighters on paper fingerprint cards to identify areas applicants should complete, e.g., name, date of birth, signature, etc. However, the FBI's card scanning service cannot process fingerprint cards with highlighted fields. All highlighted colors obscure information during the scanning process. As a result, the FBI employees have had to cover information in highlighted fields with a white label and rewrite the information on this label.

The FBI also indicated that their card scanning service cannot process fingerprint cards that have been perforated with any type of hole puncher. Consequently, please **do not highlight** any areas of the fingerprint cards **or perforate** them. If you have any questions regarding this notice, please feel free to contact Joe Martinez, Chief, Finance Division at 503-326-5214 or Dennis Lloyd, Loan Officer at 503-326-5205.



### **SBA NO LONGER REQUIRES PROOF OF NATURALIZED CITIZENSHIP**

In the past the SBA required naturalized citizens to provide evidence of their citizenship status. This policy has been amended as follows:

Naturalized Citizens are persons of foreign birth who have been granted citizenship in the United States (U.S.). Naturalized citizens are not subject to any special restrictions or requirements. If an individual's SBA Form 912, "Statement of Personal History" reflects s/he is a U.S. citizen, no further verification of status is required. For additional information or questions please call Joe Martinez, Chief, Finance 503-326-5214.



### **BANKS ARE TAKING A CLOSER LOOK AT 'EXPORT EXPRESS'**

In response to demand for export financing, Bank of America has decided to participate in SBA's **Export EXPRESS** loan program effective September 2001. The decision opens the door for export related loans to be handled under the SBA **EXPRESS** lender certification granted to banks that have substantial experience in SBA lending.

The relatively new **EXPORT EXPRESS** program has the same advantages as SBA **EXPRESS**, i.e., expedited SBA review and easy access for lenders who are able to use their banks' own documentation and credit approval rules for loan requests up to \$150,000. SBA's action is limited to an eligibility review. In addition, **EXPORT EXPRESS** offers a higher guaranty at the 85% level to participating banks.

The greatly expanded categories that are eligible for financing make **EXPORT EXPRESS** especially attractive for early stage exporters,

(Continued on page 5)



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who may have multiple, relatively small financing needs. In contrast to the existing Export Working Capital Program, the new **EXPORT EXPRESS** loans can combine working capital and fixed asset uses for business expansion and marketing in one single loan. **EXPORT EXPRESS** loans may be used for trade show support and marketing, equipment or real estate, supplier financing and export business expansion. Fees range from ¼% to 2% depending on maturity.

For more information, contact Inge McNeese at the US Export Assistance Center, Portland, 503-326-5498.



### **LODGING FRANCHISES AND ANNIVERSARY DATE TERMINATION PROVISIONS**

Some franchise agreements in the hotel/motel industry allow the franchisor to terminate the contract without cause on designated anniversary dates, such as every five years. Such a provision makes the franchise ineligible for SBA financing. The remedy is an amendment stating that the franchisor will not enforce such a provision.

Every lodging franchisor on the Franchise Registry that has such a provision in the franchise agreement, has either agreed to an addendum that is available on the private franchise registry (<http://www.franchiseregistry.com/private>), or has agreed to issue a side agreement that it will not enforce any anniversary termination provision so long as SBA financing is outstanding.

When you process SBA financing for a lodging company franchise or license, log onto the Franchise Registry private portion of the website "Lenders Welcome" to ascertain if there is an addendum on file ("Go to Addendum".) If there

(Continued on page 2)

## **ABOUT WIZARD VERSIONS**



In the last year, the SBA Wizard (Authorization Boilerplate) library doubled in size, adding the CAPLine and the EWCP Wizards. The various Wizard versions can be confusing. It is the SBA's policy to update the Wizard once a year. The Wizards for the standard 7(a) and the 504 programs are using Version 4.0.

The CAPLine has had two updates since its debut and now uses Version 1.2. The new EWCP is still on version 1.0. Beginning in 2002, annual releases of all wizards will be numbered with the calendar year: 2002, 2003, etc. Any interim releases will be numbered 2002.1, 2003.1, etc.

Please be sure that you are using the most up to date version when you draft your authorizations. Once a new version is released, it is immediately available for use and generally required to be used 30 days from the Procedural Notice announcing the release. If you have any questions about the correct version to use, contact Esther Schulze at 503-326-5227.



### **CHANGE IN OREGON BOILERPLATE PROVISIONS**

The Portland District Office recently modified our policy as to the required paragraphs for junior real estate liens. In the past we required that paragraph 2, 3, and 6 be included. We are now requiring only paragraphs 2 and 6 (closing open ended prior liens and verifying prior lien amounts.) This change should be reflected in the 2002 modifications of the Wizard.

The paragraph that is no longer required for all junior liens is the paragraph requiring 60 day notice form the senior lienholder. Although this is no longer required for all real estate junior liens, we recommend that it be used and we may require it for project collateral (commercial real estate) that has a senior lien.